

LINDA LINGLE  
GOVERNOR OF HAWAII



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
**COMMISSION ON WATER RESOURCE MANAGEMENT**  
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DEPUTY DIRECTOR

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for the meeting of the  
COMMISSION ON WATER RESOURCE MANAGEMENT

February 21, 2008  
Honolulu, Oahu

Basin Project Inc.  
**CANCELLATION OF WATER USE PERMIT NO. 743 AND  
DECLARATORY RULING DEC-ADM08-A2  
FOR ADMINISTRATIVE CANCELLATION OF WATER USE PERMITS**  
John Dominis Restaurant Well (Well No. 1751-09)  
TMK 2-1-060:013, Oahu

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APPLICANT:

Basin Project Inc.  
43 Ahui Street  
Honolulu, HI 96813

LANDOWNER:

Hawaii Community Development Authority  
677 Ala Moana Blvd., Ste. 1001  
Honolulu, HI 96813

BACKGROUND:

On September 25, 2005, the Commission on Water Resource Management (Commission) issued an Exploratory Well Construction Permit for the John Dominis Restaurant Well (Well No. 1751-09). At the Commission's October 25, 2005 meeting, the Commission issued a Water Use Permit (WUP No. 743) to Basin Project Inc. for 0.864 mgd of salt water from that well.

On November 30, 2007, Commission staff received a letter from Basin Project Inc. requesting cancellation of the Water Use Permit, stating that they have abandoned all plans for constructing a well.

ISSUES/ANALYSIS:

The Hawaii Water Code and administrative rules allows for the voluntary cancellation of a water use permit in accordance with §174C-58 HRS and §13-171-24(4) HAR, which state the following:

*Revocation of permits. After a hearing, the commission may suspend or revoke a permit for:*

- (1) *Any materially false statement in the application for the water permit, a modification of a permit term, or any materially false statement in any report or statement of fact required of the user pursuant to this part.*
- (2) *Any willful violation of any condition of the permit.*
- (3) *Any violation of any provision of this chapter.*
- (4) *Partial or total nonuse, for reasons other than conservation, of the water allowed by the permit for a period of four continuous years or more. The commission may permanently revoke the permit as to the amount of water not in use unless the user can prove that the user's nonuse was due to extreme hardship caused by factors beyond the user's control. The commission and the permittee may enter into a written agreement that, for reasons satisfactory to the commission, any period of nonuse may not apply towards the four-year revocation period. Any period of nonuse which is caused by a declaration of water shortage pursuant to section 174C-62 shall not apply towards the four-year period of forfeiture.*

*The commission may cancel a permit, permanently and in whole, with the written consent of the permittee. [L 1987, c 45, pt of §2]*

While the suspension or revocation of a permit based upon one of the four criteria above explicitly requires a hearing in the code, the language in §174C-58 HRS doesn't state that a hearing is required for permit cancellation where there is written consent of the permittee. However, the corresponding administrative rule 13-171-24(4) incorporated the last sentence into subsection (4), implying that a hearing is required. Therefore, it is not clear if the only forum for the Commission to cancel permits is at a regular Commission meeting.

Staff considered the following scenarios regarding cancellation of a water use permit:

- 1) Cancellation, when initiated by the permittee who is both the owner of the source and end uses, should have no dispute. Therefore, this scenario should be an acceptable candidate for administrative cancellation.
- 2) Revocation or suspension initiated by Commission with follow-up written consent of the permittee(s) should be an acceptable candidate for administrative cancellation.
- 3) When the well/diversion operator/permittee is different from the source landowner, both parties need to consent as both are permittees via 174C-51(B) HRS before it should be acceptable to cancel the permit administratively so long as no other parties or public trust uses are involved.
- 4) When other public trust end uses are involved (domestic use, Department of Hawaiian Homelands, or resource protection and traditional and customary practices), if there is consent from all parties involved then administrative cancellation should be acceptable.

Because staff does not foresee problems with cancelling permits where there is written consent of the permittees and public trust end users, if applicable, staff believes that it would be more efficient for the Commission to delegate authority to the Chairperson to cancel water use permits for the four scenarios listed above.

If a written request for cancellation does not meet any of the four scenarios described above, such a request would be brought to the Commission for action.

#### RECOMMENDATION:

That the Commission:

1. Permanently cancel Water Use Permit No. 743;

2. Adopt the following Declaratory Ruling DEC-ADM08-A2:

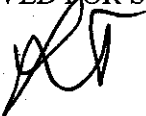
The Commission delegates to the Chairperson the authority granted under 174C-58 HRS to cancel any Water Use Permit, permanently and in whole, with the written consent of the permittee(s). When the permittee is not the land owner of the source, the source landowner's written consent shall also be required. Additionally, where there are public trust end use issues involved, consent needs to be obtained from the affected parties for the request to be administratively approved; otherwise such a written request will be brought before the Commission for action. All actual cancellations shall be published in the Commission's monthly bulletin.

Respectfully submitted,



KEN C. KAWAHARA, P.E.  
Deputy Director

APPROVED FOR SUBMITTAL:



LAURA H. THIELEN  
Chairperson